IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

TUESDAY, THE 11TH SEPTEMBER 2007 / 20TH BHADRA 1929

Crl.L.P..No. 206 of 2007()

CC.293/2004 of JUDICIAL FIRST CLASS MAGISTRATE COURT, KOYILANDY

.....

APPELLANT/COMPLAINANT:

ABDUSALAM, S/O MOIDEEN HAJI,
MADATHUVEETIL, MOODADI AMSOM, DESOM,
KOYILANDY.

BY ADVS. SRI.M.SHAJU PURUSHOTHAMAN
SRI.K.S.RAJESH

RESPONDENTS: ACCUSED

---

1. IMBICHALI, S/O MAMMU,
AAPPATTA, KOTTOOR AMSOM, MODAD DESOM,
KOYILANDY.

2. STATE OF KERALA REP. BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. THOMAS JOHN AMBOOKKAN

THIS CRIMINAL LEAVE PETITION HAVING COME UP FOR ADMISSION 0 ON 11/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.THANKAPPAN, J.

CRL. L.P. NO.206 OF 2007

Dated this the 11th day of September, 2007

O R D E R

This petition for special leave to appeal is filed against the judgment in C.C. No.293 of 2004 on the file of the Judicial First Class Magistrate's Court, Koyilandy.

2. The case of the petitioner - complainant was that the first respondent - accused borrowed from him an amount of Rs.37,000/- and on demanding repayment of the said amount, the first respondent issued Ext.P1 cheque which when presented to the bank for encashment was dishonoured due to insufficiency of funds in the account of the first respondent. After complying with the statutory provisions regarding notice and on finding that the first respondent had not sent any reply to the notice or paid the amount covered by the cheque, the petitioner filed the complaint. To prove the case of the complainant, the Power of Attorney Holder of the complainant and the Manager of the Bank were examined as PWs.1 and 2 respectively and Exts.P1 to P7 were produced. No oral or

documentary evidence was adduced on the side of the accused. On closure of the complainant's evidence, the accused was questioned under Section 313 Cr.P.C . He denied the transaction which led to the issuance of Ext.P1 cheque. After considering the entire evidence, the trial court acquitted the accused , finding him not guilty.

3. The trial court found that the Power of Attorney Holder of the petitioner - complainant who was examined as PW.1 was not aware of the transaction which took place between the complainant and the accused. The trial court also found that unless and until it is proved by the complainant that the cheque in question was signed by the accused, the complainant cannot have a case under Section 138 of the Negotiable Instruments Act, 1881. To come to this conclusion, the trial court relied on the decision of the Apex Court reported in **Narayana Menon v. State of Kerala, 2006(3) K.L.T.404** wherein the Apex Court held as follows:

> "It was for the Appellant only to discharge initial onus of proof. He was not necessarily required to disprove the prosecution case. Whether in the given facts and circumstances of a case, the initial burden has been discharged by an accused would be a question of fact. It was matter relating to appreciation of evidence."

The trial court also found that the complainant did not prove the signature contained in Ext.P1 cheque as that of the accused and that no attempt was made to compare the signature contained in Ext.P1 with the specimen signature of the accused maintained by the bank. In the above circumstances, this Court is of the view that the finding entered by the trial court is based on evidence and it requires no interference.

The Crl. Leave Petition is accordingly dismissed.

(K.THANKAPPAN, JUDGE)

sp/

THANKAPPAN, J.

CRL.A. NO.

JUDGMENT

SEPTEMBER, 2007